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122 Mass. 165, 167. But if the policy expressly provides that the beneficiary shall recover regardless of a breach of condition by the insured, such a breach obviously does not prevent the beneficiary from recovering. *Gillard v. Manufacturers' Ins. Co.* (1919) 93 N. J. L. 215, 107 Atl. 446; *Oakland Home Ins. Co. v. Bank of Commerce* (1896) 47 Neb. 717, 66 N. W. 646. The New Jersey court has sought to secure for the travelling public the full security the legislature sought to give. See *Gillard v. Manufacturers' Casualty Ins. Co.* (1918) 92 N. J. L. 141, 143, 144, 104 Atl. 707. To do this in the instant case it was necessary to disregard the expressed condition in the policy and in effect hold the defendant liable on a contract it did not make. As the insurance company had issued a policy on which the public relied, in permitting the insured to operate the bus, such a decision is the more readily justified. This case illustrates the recent tendency away from legalistic formalism.

JURY—SEPARATION IN A CAPITAL CASE.—The defendant was indicted for murder. During the trial, the court permitted the jury to separate. The defendant was convicted. On appeal, *held*, conviction affirmed. The action of the court will not be reviewed unless it appears affirmatively that prejudice resulted to the defendant. *McHenry v. United States* (D. C. Dist. Col. 1921) 49 Wash. Law Rep. 771.

At early common law the separation of the jury in a capital case during the trial was error warranting a new trial or reversal of judgment. See *State v. Cucuel* (1865) 31 N. J. L. 249, 252. There is no separation if the jury is under the supervision of the court or of its sworn officers. *State v. Cucuel, supra*. It has been held that separation, even with the consent of the defendant, vitiates a conviction in a capital case, prejudice to the defendant being conclusively presumed. *Woods v. State* (1871) 43 Miss. 364. The weight of authority, however, leaves it within the court's discretion as to whether the jury be allowed to separate during the trial of a felony punishable by death. *Holt v. United States* (1910) 218 U. S. 245, 31 Sup. Ct. 2; *Stephens v. The People* (1859) 19 N. Y. 549; *State v. Williams* (1905) 96 Minn. 351, 105 N. W. 265. The action of the court is not error unless it has abused its discretion. See *Holt v. United States, supra*, 251. The burden is on the defendant to show that the jurors were improperly influenced by the separation. *Reeves v. The State* (1907) 84 Ark. 569, 106 S. W. 945. An unauthorized separation, in the absence of prejudice to the defendant, is not ground for reversal. *Commonwealth v. Cressinger* (1897) 193 Pa. St. 326, 44 Atl. 433. The burden is on the prosecution to show that the defendant was not prejudiced. *Gamble v. The State* (1902) 44 Fla. 429, 33 So. 471; *contra, People v. Bemmerly* (1893) 98 Cal. 299, 33 Pac. 263. In many states statutes permit or prohibit the separation of the jury in a capital case. Mich. Comp. Laws (1915) § 15833 (permitting); Ky. Code Crim. Proc. (Carroll 1909) § 244 (prohibiting). The rigor of the common law was motivated by the desire both to keep the jury from outside influence and to compel them to reach a verdict. The latter policy has now been abandoned and the rule laid down in the instant case is adequate to secure the former.

LIBEL AND SLANDER—PRIVILEGE—NEWSPAPER—"SLACKER LIST."—The defendant newspaper at the request of the War Department published a "slacker list" which included the plaintiff's name. The plaintiff had not evaded the Draft Law and sued the defendant for libel. The defendant demurred to the complaint, claiming that the publication was absolutely privileged. The court overruled the demurrer, stating that the defendant's privilege, if any, was only conditional. *Hyman v. Press Publishing Company* (App. Div. 1st Dept. 1922) 192 N. Y. Supp. 47.

Important executive government officials are absolutely privileged while discharging their official duties. *Spalding v. Vilas* (1896) 161 U. S. 483, 16 Sup. Ct.

631; *De Arnaud v. Ainsworth* (1904) 24 App. D. C. 167; see (1910) 10 COLUMBIA LAW REV. 131, 140. This privilege is not extended to members of local bodies as an alderman, or a mayor, whose privilege is only conditional. *Bradford v. Clark* (1897) 90 Me. 298, 38 Atl. 229; *Mayo v. Sample* (1865) 18 Iowa 306. If the Secretary of War was absolutely privileged to publish the "slack list," and the only efficacious method was to publish it in the newspapers, and the defendant did so at his request, the same immunity should be accorded the defendant. See (1920) 20 COLUMBIA LAW REV. 369, 374. But in England a statute gives a newspaper only a conditional privilege in such a case. Law of Libel Amendment Act (1888) St. 51 & 52 Vict. c. 64, § 4. See Fraser, *Libel and Slander* (5th ed. 1917) 222; Odgers, *Libel and Slander* (5th ed. 1911) 338. The defendant would not be even conditionally privileged if the person requesting the publication were not privileged. *Trebby v. Transcript Publishing Co.* (1898) 74 Minn. 84, 76 N. W. 961. A third and interesting problem would be presented if the official requesting publication had only a qualified privilege and had not forfeited it. The newspaper would then have at least a conditional privilege. *Younans v. Smith* (1897) 153 N. Y. 214, 47 N. E. 265 (*semble*). There is a dictum that an agent other than a newspaper would have an absolute privilege. See *Adam v. Ward* [1917] A. C. 309, 331. Conceding this to be sound when applied to an agent communicating the defamatory matter only to a few interested persons, it is doubtful whether such immunity should be accorded the publisher of a newspaper, because of the necessarily widespread dissemination of the libelous matter. The policy underlying the English statute would justify a judicial restriction of a newspaper's privilege to cases of good faith. It is regrettable that the report of the instant case does not mention which type of case was involved.

MASTER AND SERVANT—RECOVERY UNDER WORKMEN'S COMPENSATION ACT FOR INJURIES TO MINOR ILLEGALLY EMPLOYED.—The plaintiff, as the dependent mother of a deceased workman, made application for compensation to the Industrial Board. The deceased was a minor legally employed by the defendant as an errand boy, but part of his duties were in violation of a statute. *Held*, that the Industrial Board was without jurisdiction to hear a claim arising from injuries received while in performance of those duties which were illegal by statute. *Driscoll v. Weidely Motors Co.* (Ind. App. 1921) 133 N. E. 12.

At common law a minor employed in violation of a statute can recover for injuries received in the course of that employment. *Plate v. Ludlow-Saylor Wire Co.* (Mo. 1921) 227 S. W. 899. The employer cannot set up a statute which makes the employment illegal. *Dion v. Richmond Mfg. Co.* (1902) 24 R. I. 187, 52 Atl. 889. The Workmen's Compensation Act in the instant case, which is virtually the same as the Uniform Workmen's Compensation Act, provides that no employee can bring an action except under the Act. Ind. Ann. Stat. (Burns 1918 Supp.) § 8020pp. By the statute, however, a minor illegally employed is not an employee, and is not entitled to compensation under the Act. *In re Stoner* (Ind. App. 1920) 128 N. E. 938. Some jurisdictions, however, limit the application of similar statutes so that one whose general employment in the business is legal is not barred under the Act because a statute prohibits his working at the particular task assigned. *Roszek v. Bauerle & Stark* (1917) 205 Ill. App. 276; *Lutz v. Willmanns Bros. Co.* (1917) 166 Wis. 210, 164 N. W. 1002. Where there is no statutory definition of an employee, the rule, illogically, seems to bar minors illegally employed from compensation under the Act. *Lesko v. Liondale Bleach, Dye & Print Works* (1919) 93 N. J. L. 4, 107 Atl. 275. Where the minor is held not within the Act he can sue at common law. *New Albany Box & Basket Co. v. Davidson* (Ind. 1920) 125 N. E. 904. The instant decision is in harmony with the majority interpretation of the statutes. But it is regrettable that the court